IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FOURTEENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 19050 of 1997

Between:

M.Ramakanth S/o.Late Venkateswarulu
R/o.Kavali , Nellore Dist

..... PETITIONER

AND

1 A.P. Forest Development Corporation Limited Rep by its Chairman
III Floor , UNI BUilding , Ac, Guards , Hyderabad.
2 The Vice Chairman and Managing Director
III Floor, UNI Building , Ac Guards , Hyderabad.
3 State Govt of A.P Rep by its Forest Secretary
Secretariat.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to May be pleased to issue an appropriate writ , or order or direction more particularly one in the nature of writ of Certiorari , to call for records relating to notice bearing No.PD/6249/95/2381 , Dt: 16-07-1997 and quash the same and pass such other order or orders.

Counsel for the Petitioner : SMT. M.S.TIRUMALA RANI

Counsel for the Respondents 1 & 2 : MR.P.SREE RAMULU NAIDU

Counsel for the 3rd respondent : Mr. Sriramachandra Murthy

The Court made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.19050 OF 1997

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ORDER :

This writ petition is filed seeking a Writ of Certiorari to call for the records relating to impugned proceedings dated 16-07-1997 issued by the 2nd respondent and to quash the same being arbitrary and illegal.

The petitioner at the relevant point of time was working as Divisional Manager in A.P. Forest Development Corporation Limited at Kavali. In the year 1995, while he was working at Rajahmundry, a charge-sheet dated 10-07-1995 was issued alleging that he committed certain irregularities during his tenure as the Divisional Manager

in R.V. Nagar (West Division), Vizag during the period from 08-09-1994 to 10-12-1994. The petitioner submitted his explanation dated 07-08-1995 denying all the charges levelled against him. Thereafter, an enquiry officer was appointed who conducted an enquiry and submitted his report to the second respondent – The Vice-chairman and Managing Director of the A.P. Forest Development Corporation (for short, 'the Corporation'). In pursuance thereof, the second respondent issued a show-cause notice dated 28-04-1996 proposing the punishment of stoppage of four annual grade increments with cumulative effect. The petitioner submitted a detailed explanation dated 17-09-1996 stating that the findings of the enquiry officer which were not based on any acceptable evidence cannot be sustained. However, the second respondent by order dated 05-11-1996 imposed the penalty of stoppage of next four annual grade increments with cumulative effect. Against the said order, the petitioner preferred an Appeal 09-02-1997 before the Board of Directors of the Corporation, through proper channel. Pending the said appeal, the impugned proceedings dated 16-07-1997 issued by the 2nd respondent were served on the petitioner calling upon him to show-cause as to why the punishment already awarded by the second respondent should not be revised and punishment of "Degradation to the lower post of Plantation Manager" should not be inflicted as per the decision of the Board within fifteen days.

In the counter-affidavit filed on behalf of the respondents, it is stated that the Board of Directors have the power and jurisdiction to dispose of the Appeal on merits and therefore the punishment awarded by the Board in the Appeal and the show-cause notice dated 16-07-1997 issued by the second respondent as authorised by the Board are valid. It is further stated that the appellate authority i.e., Board of Directors exercising the quasi-judicial powers is competent to examine the appeal with reference to the gravity of charges proved and established and to impose more onerous penalty than the penalty that was imposed by the Vice-chairman and Managing Director of the Corporation. It is also stated that since the Board is empowered to delegate its powers to the Chief Executive i.e., the Vice-chairman and Managing Director and it was opined by the Board that the punishment awarded was not proportionate to the gravity of the charges held proved and established, the impugned proceedings were rightly issued by the second respondent calling upon the petitioner to show-cause as to why the higher penalty

should not be imposed.

I have heard the learned Counsel for the petitioner and the learned Standing Counsel appearing for the Corporation and perused the material on record.

The learned Counsel for the petitioner raised various contentions stating that the charges levelled against the petitioner are all false and baseless and at any rate the respondents are not justified in issuing the impugned notice proposing to enhance the penalty without considering the matter on merits and without going into the correctness of the findings recorded by the enquiry officer.

The learned Standing Counsel appearing for the Corporation, at the outset, raised an objection as to the maintainability of the writ petition on the ground that since the impugned notice is only a show-cause notice, the writ petition is premature and cannot be maintained.

A perusal of the impugned proceedings shows that the Appeal filed by the petitioner was placed before the Board of Directors during their 112th meeting held on 26-06-1997 and that the Board having examined the appeal resolved as under:

"The punishment awarded by the Vice-Chairman and Managing Director is less for the quantum of misappropriation done by Sri M.Ramakanth. The Board decided that Sri M.Ramakanth be awarded punishment of degradation to the lower post. Board authorized the Vice-chairman and Managing Director to issue show-cause notice accordingly to Sri M.Ramakanth, Divisional Manager and to take necessary further action."

Pursuant thereto, the petitioner was called upon to submit his explanation within fifteen days as to why the punishment of degradation to lower post should not be inflicted.

Though the impugned proceedings were termed as show-cause notice, as rightly contended by the petitioner, the same cannot be held to be a mere notice

calling upon the petitioner to submit his defence, but it appears to be a communication of the decision of the Board to enhance the penalty. Hence, in my considered opinion, the matter deserves consideration on merits and the writ petition cannot be rejected as not maintainable.

It is to be noted that the A.P. Forest Development Corporation Limited Staff Regulations have been framed by the Board of Directors in exercise of its powers under Article 71 of the Articles of Association of the Forest Development Corporation Limited. Under Regulation-64, an employee shall have right of appeal against any order passed by the competent authority which injuriously affects his interest. It is not in dispute that against the order passed by the second respondent imposing the penalty of stoppage of increments, the appeal lies to the Board of Directors.

It is clear from the impugned notice that the appeal filed by the petitioner was already examined by the Board of Directors on 26-06-1997 and a resolution was passed stating that the penalty awarded by the second respondent is not sufficient and that he shall be awarded a higher penalty of degradation to a lower post. The second respondent was authorized to issue a show-cause notice accordingly and to take further action. Thus, undoubtedly, a decision has already been taken by the Appellate Authority to enhance the penalty imposed.

There is nothing on record to show that under the Regulations, the Board while dealing with an appeal against the original order of penalty is empowered to enhance the quantum of penalty. Even assuming that the Board (appellate authority) is competent to do so, it is a settled principle of law that the appellant shall be afforded an opportunity of being heard before taking any such decision. Admittedly, no such opportunity was afforded to the petitioner before passing the resolution to enhance the penalty. The impugned notice which is nothing but communication of the decision of the Appellate Authority through the second respondent is only an empty formality and cannot be said to be in conformity with the fundamental principles of natural justice. Hence, the entire procedure adopted by the Appellate Authority is vitiated and liable to be declared as arbitrary and illegal.

In the circumstances, the impugned notice is set aside with a direction to the Board of Directors of the Corporation to consider the appeal preferred by the petitioner afresh and to pass appropriate orders in accordance with law as expeditiously as possible preferably within a period of three months from the date of receipt of this order.

The Writ Petition is accordingly allowed. No costs.

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14th October, 2004.

Gbs

That Rule Nisi has been made absolute above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Thursday, the 14th day of October, 2004.

Assistant Registrar

To

1 The Chairman, A.P. Forest Development Corporation Limited,
III Floor , UNI BUilding , Ac, Guards , Hyderabad.
2 The Vice Chairman and Managing Director
III Floor, UNI Building , Ac Guards , Hyderabad.
3 The Forest Secretary, State Govt of A.P,
Secretariat.

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